



U.S. Department of Justice

Immigration and Naturalization Service

DD

OFFICE OF ADMINISTRATIVE APPEALS

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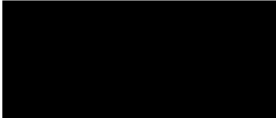


Date: MAY 24 2000

IN RE: Applicant:

APPLICATION:

IN BEHALF OF APPLICANT:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identifying information should be redacted to prevent clearly unwarranted disclosure of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York New York, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on May 2, 1986 in Santo Domingo, Dominican Republic. The applicant's father, [REDACTED] was born in the Dominican Republic in June 1962 and became a naturalized U.S. citizen on June 14, 1996. The applicant's mother, [REDACTED] was born in the Dominican Republic and never became a United States citizen. The applicant's parents never married. The applicant was recognized by her father on June 24, 1989, in the Dominican Republic. The applicant was lawfully admitted for permanent residence on May 7, 1990. She claims eligibility for a certificate of citizenship under § 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1432.

The district director determined that the applicant was born out of wedlock and the her mother is not a United States citizen as required. The district director then denied the application accordingly.

Section 321 CHILD BORN OUTSIDE THE UNITED STATES OF ALIEN PARENT;
CONDITIONS UNDER WHICH CITIZENSHIP AUTOMATICALLY ACQUIRED

(a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

- (1) The naturalization of both parents; or
- (2) The naturalization of the surviving parent if one of the parents is deceased; or
- (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-
- (4) Such naturalization takes place while said child is under the age of 18 years; and
- (5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

In Matter of Fuentes-Martinez, Interim Decision 3316 (BIA 1997), the Board stated the following; "Through subsequent discussions, [the interested agencies] have agreed on what we believe to be a more judicious interpretation of § 321(a). We now hold that, as

long as all the conditions specified in § 321(a) are satisfied before the minor's 18th birthday, the order in which they occur is irrelevant."

The record establishes that (1) the applicant's father became a naturalized U.S. citizen prior to her 18th birthday, (2) the applicant was acknowledged by her father shortly after her birth, (3) she became the beneficiary of an approved visa petition filed by her father, and (4) she was residing in the United States in her father's legal custody as a lawful permanent resident when her father naturalized.

However, in order for the applicant to receive the benefits of § 321 of the Act, there must have been a legal separation of the parents. Matter of H--, 3 I&N Dec. 742 (C.O. 1949), held that the term "legal separation" means either a limited or absolute divorce obtained through judicial proceedings, and where the actual parents of the child were never lawfully married, there could be no "legal separation," of such parents. Therefore, the applicant's father was not legally separated from the applicant's mother when her father naturalized. If the parents were never lawfully married, there can be no legal separation, as such, and an award of custody to a naturalized parent under such circumstances does not result in derivation even though other requisite conditions are satisfied. See INTERP 320.1(a)(6).

There is no provision under the law by which the applicant could have automatically acquired U.S. citizenship through her father's naturalization. Therefore, the district director's decision will be affirmed. This decision is without prejudice to the applicant seeking U.S. citizenship through normal naturalization procedures.

ORDER: The appeal is dismissed.